

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Date:  
November 02, 2011

### Legend

X =

State =

Date =

Dear :

This responds to a letter dated October 20, 2011 submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(b)(5) of the Internal Revenue Code.

The information submitted states that X was formed in State on Date. X's shareholders intended for X to be an S corporation effective Date. However, no Form 2553, Election by a Small Business Corporation, was timely filed for X. Accordingly, X requests a ruling that it will be treated as an S corporation effective Date.

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b) provides, in relevant part, that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be treated as an S corporation for the year in which the election is made. Under section 1362(b)(3), an S election made after the first two and one-half months of a corporation's taxable year, results in the corporation not being treated as an S corporation until the taxable year following the year in which the S election is filed.

Section 1362(b)(5) provides that if (A) an election under §1362(a) is made for any taxable year after the date prescribed by § 1362(b) for making the election for the taxable year or no § 1362(a) election is made for any taxable year, and (B) the Secretary determines that there was reasonable cause for the failure to timely make the election, then the Secretary may treat the election as timely made for such taxable year and § 1362(b)(3) shall not apply.

X did not timely file an election under § 1362(a) to be treated as an S corporation for X's taxable year beginning Date. Based solely on the facts and the representations submitted, we conclude that X established reasonable cause for failing to make a timely election to be an S corporation effective Date. Accordingly, provided that X makes an election to be an S corporation by filing a completed Form 2553 with the appropriate service center effective Date within 120 days following the date of this letter, then such election will be treated as timely made for X's taxable year beginning Date. A copy of this letter should be attached to the Form 2553.

Except as expressly set forth above, no opinion is expressed or implied concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b).

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford Poston  
Senior Counsel, Branch 2  
(Passthroughs & Special Industries)

Enclosures (2)  
Copy of this letter  
Copy for § 6110 purposes

cc: